

REMARKS

Claims 11-20 were rejected under 35 U.S.C. 112, first and second paragraphs, for those reasons noted in the Office Action. Applicants have amended the claims to delete all reference to cooling and packing means. Accordingly, Applicants respectfully submit that the rejections under 35 U.S.C. 112 have been rendered moot and respectfully request that such rejections be withdrawn.

Claims 11-16, 19 and 20 were rejected under 35 U.S.C. 103(a) over Lloyd, in view of Sagel and Curtis. Applicants respectfully traverse in view of the Amendment. Applicants have cancelled claims 12, 14-16, 19 and 20, thereby rendering those rejections moot. Claims 11 and 13 are pending and the following arguments are made with respect thereto.

Initially, Applicants respectfully submit that Lloyd is non-analogous art and thus improperly cited. The test for determining whether a reference in the prior art is "analogous" has been set forth by the Court of Appeals for the Federal Circuit (CAFC) in *In re Clay*, 23 U.S.P.Q.2d 1058 (Fed. Cir. June 10, 1992). The two criteria for determining whether art is analogous are the following: 1) whether the art is from the same field of endeavor, regardless of the problem addressed, and 2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. See *Clay* at page 1058.

With respect to the first criteria, Applicants respectfully submit that Lloyd is not within the same field of endeavor as Applicants' invention in that Lloyd is directed to a process and apparatus for the production of protective patches for shrinkable bags, such as are used in packaging meat, while Applicants invention is directed to an apparatus for making a teeth treatment device that happens to whiten teeth. Applicants respectfully submit that one looking to manufacture teeth treatment devices for whitening teeth would not look to the meat packaging art for guidance.

With regards to the second criteria, Applicants submit that Lloyd is not reasonably pertinent to the problem with which Applicants are involved. Applicants have invented an apparatus that prepares a wax saturated substrate that has a layer of bleach sprayed on one side and that has a plastic film applied to the side of the wax saturated substrate upon which the bleach has been sprayed. The plastic film serves to maintain the bleach layer on the wax saturated substrate so that, when removed, the wax saturated substrate may be applied to teeth, thereby whitening the teeth.

As Lloyd is not within the field of making teeth treatment devices as is Applicants' invention, nor is it reasonably pertinent to apparatus for making such teeth treatment devices, Applicants respectfully submit that Lloyd is improperly cited and request that all rejections based on Lloyd be withdrawn.

Assuming *arguendo* that Lloyd is analogous art, and Applicants respectfully submit that it is not, Applicants respectfully submit that Lloyd in view of Curtis fail to render claims 11 and 13 obvious. As the Office Action indicates, Lloyd is silent as to the inclusion of a bleach spray means for applying a bleaching solution to one side of the wax impregnated cloth. Applicants further respectfully submit that Lloyd fails to disclose the necessity of having a means for applying a plastic film on the side of the wax impregnated cloth to which bleach has been sprayed. As indicated in Lloyd, a plastics web "may" be applied, but need not be. However, devices prepared by Applicants claimed apparatus require not only a coating of wax, but also a layer of bleach and a plastic film over the layer of bleach. As such, both a

bleach spray means and a plastics sheet means are required by Applicants' apparatus. Neither are required in Lloyd.

Curtis is directed to dental floss that may be wax coated or non-wax coated (Col. 2, ll 20-22). The floss may be coated with a medicament, including peroxides such as urea peroxide, but need not be (Col. 2, ll 64-65). When additives are applied as a liquid "the floss is dried prior to being wound onto a spool. After drying, the floss is wound onto a spool." (Col. 3, ll 61-63). Curtis is silent as to any plastic sheet means. In fact, according to the teachings of Curtis, one would not, nor could they, utilize an apparatus including plastic sheet means for joining a thin plastic sheet to one side of a wax saturated substrate to form a plastic coated wax saturated substrate having a quantity of bleach. Such an apparatus would render the flosses of Curtis ineffective for their intended use, that being cleaning teeth. Additionally, Applicant respectfully submit that the combination of Lloyd and Curtis teaches away from their claimed apparatus, in that such a combination would render an apparatus that would not include a plastic sheet means as required by Applicants' claimed apparatus, since such a means is merely optional in Lloyd and precluded by Curtis.

Based on all of the foregoing, Applicants respectfully submit that claims 11 and 13 are patentable under 35 U.S.C. over Lloyd in view of Curtis and request that the rejection thereof be withdrawn.

Claims 17 and 18 were rejected under 35 U.S.C. 103(a) over Lloyd in view of Curtis and Sagel and further in view of Guyton. In view of the Amendment Applicants respectfully submit that this rejection is rendered moot.

Applicants respectfully submit that this Amendment constitutes a complete response to the Office Action and earnestly request a notice of allowance of claims 11 and 13.

Respectfully submitted,

/William K. Wissing/

William K. Wissing
Reg. No. 34,757
Attorney for Applicant(s)

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-6201
March 5, 2008